


# DISABILITY AND HOUSING: LEGAL AND PRACTICAL ISSUES



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## The Congressional Context

When passing the amendments to the Fair Housing Act in 1988, the House Judiciary Committee noted that the Act

"repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion."

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## Three Key Laws Relating to Discrimination Based on Disability

- ♦ Fair Housing Act (the Act)
  - Applies to virtually all housing
- ♦ Section 504 of the 1973 Rehabilitation Act (Section 504)
  - Applies to housing subsidized with federal funds
  - HUD has comprehensive regulations addressing housing funded by HUD
- ♦ The Americans with Disabilities Act (ADA)
  - Title II applies to housing operated by state or local governments and is very similar to Section 504
  - Title III applies to places that serve the general public, which includes rental offices, but not the housing itself

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## What is a Disability?

- Similar definitions under all three laws:
  - A physical or mental handicap that substantially limits one or more life activities, like walking, talking, breathing...
  - Having a history of such an impairment
  - Being perceived as having such an impairment

CAUTION: THIS IS NOT THE SAME AS THE DEFINITION OF DISABILITY FOR PROGRAM ELIGIBILITY PURPOSES

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## What is Discrimination Based on Disability?

- What are some examples of housing discrimination based on disability?



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## Diagnosis is not the issue

- Unlike program eligibility, it is not the name of the disability that matters or the source of the income, it is how the disability, of whatever type, affects a person's ability to go about daily activities
- For this reason, asking the label of the disability is not necessary
- The nature of the disability does not normally have to be disclosed

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### Key Features of the Fair Housing Act for Disability Discrimination

- ✓ No illegal inquiries
- ✓ Equality of treatment
- ✓ Reasonable accommodations
- ✓ Reasonable modifications
- ✓ Requirement that housing be designed and constructed to offer minimal accessibility

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### Key Features of Section 504 for Public and Subsidized Housing

- ✓ New construction and renovation of rental and sales property that is federally funded. HUD requires:
  - At least 5% of units for persons with mobility impairments
  - At least 2% of units for persons with vision and hearing impairments
- ✓ Providing reasonable accommodations
  - Policies
  - Structures

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### Key Features of the ADA

- ✓ Title II
  - Applies to properties operated by state and local governments
  - Applies to properties constructed after February 26, 1992
- ✓ Title III
  - Applies to areas that serve the general public
  - Requires structural access for buildings built after February 26, 1993
  - Requires removal of architectural barriers in pre 1993 buildings if feasible
  - Requires reasonable accommodation

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## Who is Protected under the Fair Housing Act?

- A buyer or a renter with a disability is protected
- A person with a disability who is going to live in a unit after it is sold or rented is protected
- A person who is associated with a person with a disability is protected

Under Section 504, only an "otherwise qualified person with a disability" is protected

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## What About Invisible Disabilities?

"If a landlord is skeptical of a tenant's alleged disability or the landlord's ability to provide an accommodation, it is incumbent upon the landlord to request documentation or open a dialogue." Jankowski Lee and Associates v. Cisneros, 91 F. 3<sup>rd</sup> 891 (7<sup>th</sup> Cir. 1996)

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## Illegal Inquiries

- Fair Housing Act has specific provisions about when you can ask about disability:

- Where disability is a requirement for eligibility
  - 202/811 housing
  - HOPWA
- Where disability is necessary for a preference
  - Accessible units

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### AND It's Okay to Ask...

- Whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance
- Whether an applicant is a current abuser or addict of a controlled substance
- The usual questions asked of everyone about whether or not the applicant meets the requirements for tenancy

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### Equality of Treatment

- People with disabilities cannot be treated adversely because they are disabled
- Differences in treatment must be justified by one or more legitimate, non-discriminatory reasons
- CAUTION: NOTHING IN THE FAIR HOUSING ACT REQUIRES THAT HOUSING BE MADE AVAILABLE TO A PERSON WHOSE TENANCY WOULD CONSTITUTE A DIRECT THREAT TO THE HEALTH OR SAFETY OF OTHERS OR WHOSE TENANCY WOULD RESULT IN SUBSTANTIAL PHYSICAL DAMAGE TO THE PROPERTY OF OTHERS

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### Exercise



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### Reasonable Accommodations

- ✓ Under disability laws, reasonable accommodations must be made at the expense of the landlord/housing provider
- ✓ Fair Housing Act:
  - ◆ Changes in rules, policies, practices, or services that are necessary for a person with a disability to have an equal opportunity to “use and enjoy” housing
- ✓ Section 504:
  - ◆ Changes to rules or policies AND structural changes that are necessary for a person with a disability to “use and enjoy” housing

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### What Makes a Reasonable Accommodation Requirement Arise?

- ✓ A person has a disability within the meaning of the law
- ✓ The housing provider knows, or should know, of the nature of the disability
- ✓ An accommodation is needed for the person to benefit from the housing
- ✓ The housing provider knows, or should know, of the need for the accommodation

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### When Do Accommodations Have to Be Made?

- ✓ The requested accommodations must be made if they are reasonable
- ✓ The requested accommodations must be acted upon within a reasonable time, because delay may amount to a denial of the accommodation

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### What is the Process for Requesting Reasonable Accommodations?

- ☞ There is no required process for making a reasonable accommodation request:
  - ◆ Accommodation requests may be made verbally or in writing
  - ◆ An accommodation request doesn't have to be called a "request for reasonable accommodation"
  - ◆ There is an obligation to make an accommodation even when one is not actually requested if the need is apparent

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### What is the Process for Making Requests for Accommodations?

- ☞ Advocates frequently advise people with disabilities to use the following process:
  - ◆ Make reasonable accommodation requests in writing
  - ◆ Keep a copy
  - ◆ Make it clear what is being requested, and that the request is because of a disability
  - ◆ Provide contact information

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### What is the Process for Responding to Requests for Accommodations?

- ☞ Listen to the request
- ☞ Consider a requested accommodation first, not some other idea about how to accommodate
- ☞ Don't ignore requests for accommodations
- ☞ If the requested accommodation is, in your view, unreasonable, engage in a dialogue
- ☞ Be very careful about asking for too much information about the person's disability
- ☞ If you have serious concerns about whether the person is disabled, or whether the accommodation must be made in order to accommodate a real disability, engage in a dialogue

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### What is a Request for an Accommodation Unreasonable?

- ✓ A request for a reasonable accommodation may be rejected if it is unreasonable:
  - ◆ The test under both the Fair Housing Act and Section 504 is whether the accommodation would pose an undue financial and administrative hardship OR
  - ◆ The accommodation would fundamentally alter the nature of the program

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### Reasonable Modifications

- ✓ The Fair Housing Act's reasonable modification requirement applies to structural changes in housing that is not federally funded.
- ✓ Housing with federal funds involved is covered by Section 504's reasonable accommodation requirements. Housing providers covered by Section 504 must make structural changes at their own expense.

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### What makes a Reasonable Modification Requirement Arise?

- ✓ Properties that are not federally subsidized:
  - ◆ "Existing premises"
  - ◆ Reasonable modifications for disabled resident to have "full enjoyment"
  - ◆ Paid for by the resident
  - ◆ Landlord must permit them if reasonable
  - ◆ No additional security deposit

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### Modifications of Rental Units

- Landlord may require assurances that work will be done “in a workmanlike manner” and required building permits will be obtained
- Landlord may reasonably require renter to restore the interior of the unit, except for reasonable wear and tear
- Landlord may require a payment into an escrow account (over a period of time) for restoration
- Tenant gets the interest on the account

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### A Word About Requiring People with Disabilities to Have Special Insurance

Several cases have strongly rejected a landlord's requirement that a person with a disability have special liability insurance as a condition of having a reasonable accommodation or modification.

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### Constructing Accessible Housing

- The Fair Housing Act and Section 504 have different requirements
- Section 504 requires the programs and activities of a federally funded to be accessible, when viewed in their entirety.
- Section 504 requires at least 5% and 2% of the units, at a minimum, on a project by project basis
- The standard for access is the Uniform Federal Accessibility Standards (UFAS)

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## Constructing Accessible Housing

- ☞ The Fair Housing Act applies to sales or rental multifamily housing designed and constructed after March 13, 1991
- ☞ It requires minimal accessibility
- ☞ It applies only to covered multifamily dwellings:
  - Buildings with four or more units
    - All ground floor units in buildings without elevators
    - All units in buildings with elevators

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## The Seven Access Requirements

1. Accessible building entrance on an accessible route
2. Accessible and usable public and common use areas
3. Usable doors
4. Accessible routes into and through covered unit
5. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
6. Reinforced walls in bathrooms for later installation of grab bars
7. Usable kitchens and baths



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CAUTION: THE FAIR HOUSING ACT DESIGN AND CONSTRUCTION REQUIREMENTS APPLY TO NEWLY CONSTRUCTED PROPERTIES THAT ARE FEDERALLY FUNDED IN ADDITION TO SECTION 504. HOPE VI, HOME, AND OTHER HOUSING CONSTRUCTED WITH FEDERAL FUNDS HAVE TO COMPLY WITH THE FAIR HOUSING ACT AND SECTION 504

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## Fair Housing Act Design Standards

- There are seven standards that are “safe harbors” to comply with the Fair Housing Act
  - HUD's Design Manual, 1988 version
  - HUD's March 6, 1991 Fair Housing Accessibility Guidelines (the Guidelines), and the June 28, 1994 Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines
  - ANSI A117.1-1986, used in conjunction with the Act and HUD's regulations, and the Guidelines

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## Standards

- CABO/ANSI A117.1-1992, used in conjunction with the Act, HUD's regulations, and the Guidelines
- ICC/ANSI A117.1-1998, used in conjunction with the Act, HUD's regulations, and the Guidelines
- Code Requirements for Housing Accessibility 2000* (CRHA), approved and published by the International Code Council (ICC), October 2000
- International Building Code 2000* (IBC) as amended by the *IBC 2001 Supplement to the International Codes*.

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## Exercise



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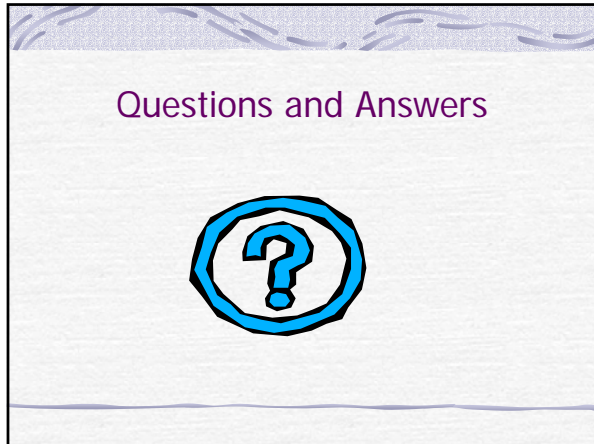
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